



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R07-OAR-2016-0571; FRL-9953-77-Region 7]

**Approval of Missouri's Air Quality Implementation Plans,
Operating Permits Program, and 112(1) Plan; Construction Permits
Required**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) is taking direct final action to approve revisions to Missouri's State Implementation Plan (SIP), Operating Permits Program, and 112(1) Plan. The April 6, 2016, request from Missouri revises fees for permitting services provided by the air quality program, including construction permit applications and operating permit applications. Missouri also removed the basic operating permit requirement in their "Operating Permits" rule for incinerators with emissions less than the de minimis levels. While EPA has never approved the basic operating permit program into Missouri's SIP or Missouri's Operating Permits Program, one statement on incinerators in the approved SIP and Operating Permits Program is removed by the submission. This statement applied the "Operating Permits" rule to all incinerators within the State. Any permittees with incinerators already required to

have either Intermediate State Operating Permits or part 70 Operating Permits will still have the same permitting requirements. This revision does not exempt any incinerators from appropriate permitting. Likewise, any future permittees with incinerators under the former version of the SIP and Operating Permits Program would have required either an Intermediate State Operating Permit or a part 70 Operating Permit will still have the same permitting requirement under the revised SIP and Operating Permits Program. Finally the submission from Missouri makes non-substantive style changes.

DATES: This direct final rule will be effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], without further notice, unless EPA receives adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2016-0571, to <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Jed D. Wolkins, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913-551-7588, or by email at wolkins.jed@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA. This section provides additional information by addressing the following:

- I. What is Being Addressed in this Document?
- II. What Part 52 Revision is EPA Approving?
- III. What Part 70 Revision is EPA Approving?
- IV. What 112(l) Revision is EPA Approving?
- V. Have the Requirements for Approval of a SIP Revision Been Met?
- VI. What Action is EPA taking?

I. What is Being Addressed in this Document?

The submission from Missouri revises 10 CSR 10-6.060, Construction Permits Required, and 10 CSR 10-6.065, Operating Permits. Missouri's revisions increase fees for permitting services provided by the air quality program, including construction permit applications and operating permit applications. Missouri also removed the basic operating permit requirement, under 10 CSR 10-6.065, for incinerators with emissions less than the de minimis levels. While EPA has never approved the basic operating permit program into the Missouri's SIP or Missouri's Operating Permits Program, one statement on incinerators, 10 CSR 6.065(1)(B), in the approved SIP and Operating Permits Program is removed by the submission. This statement applied 10 CSR 10-6.065 to all incinerators within the State. Any Permittees with incinerators already required to have either Intermediate State Operating Permits or part 70 Operating Permits will still have the same permitting requirements. This revision does not exempt any incinerators from appropriate permitting. Likewise, any future permittees with incinerators under the former version of the SIP and Operating Permits Program would have required either an Intermediate State Operating Permits or a part 70 Operating Permits will still have

the same permitting requirement under the revised SIP and Operating Permits Program. Finally the submission from Missouri makes non-substantive style changes.

II. What Part 52 Revision is EPA Approving?

The revisions increase the fees charged for construction and operating permits. After stakeholder outreach, Missouri has increased fees in order to ensure that the department can continue to provide services and to keep the Air program solvent. The De minimis, the Minor, and the Temporary/Pilot construction permit filing fees increased from one hundred dollars (\$100) to two hundred fifty dollars (\$250). The New Source Review (NSR), the Prevention of Significant Deterioration (PSD), the Hazardous Air Pollutants (HAP), and the Initial Plantwide applicability limit (PAL) construction permit filing fees increased from one hundred dollars (\$100) to five thousand dollars (\$5,000). The Renewal PAL construction permit filing fee increased from one hundred dollars (\$100) to two thousand five hundred dollars (\$2,500). The Portable Source Relocation Request construction permit filing fee increased from two hundred dollars (\$200) to three hundred dollars (\$300). The processing fees for all types of construction permits, except the Portable Source Relocation Request, increased from fifty dollars per hour (\$50/hr) to seventy-five dollars per hour (\$75/hr). The initial and renewal Intermediate State Operating Permit and part 70

Operating Permit filing fees increased from a flat one hundred dollar (\$100) fee to a variable fee based on number of units and additional complexity. The operating permit filing fees have a cap of six thousand dollars (\$6,000).

Specifically, revisions in the SIP add new fee tables within the following rule sections:

- 10 CSR 10-6.060(10)-Permit Fees and Amendments;
- 10 CSR 10-6.065(5)-Intermediate State Operating Permits;
- and
- 10 CSR 10-6.065(6)- Part 70 Operating Permits.

Revisions in the SIP amend the following rules to reference the new fee tables as follows:

- 10 CSR 10-6.060(4)-Portable Equipment;
- 10 CSR 10-6.060(10)(A)-Permit Fees and Amendments; and
- 10 CSR 10-6.060(12)(A)-Appendix A, Permit Review Procedures.

Revision in the SIP remove the blanket applicability of operating permits to incinerators as follows:

- 10 CSR 10-6.065 (1)(B)- Applicability, Incinerators.

Revisions in the SIP also make non-substantive style changes throughout.

Details of Missouri's SIP revisions can be found in the Technical Support Document located in this docket.

II. What Part 70 Revision is EPA Approving?

The initial and renewal Intermediate State Operating Permit and part 70 Operating Permit filing fees increased from a flat one hundred dollar (\$100) fee to a variable fee based on number of units and additional complexity. The filing fee has a cap of six thousand dollars (\$6,000).

Revisions in part 70 add new fee tables within the following rule sections:

- 10 CSR 10-6.065(5)-Intermediate State Operating Permits;
and
- 10 CSR 10-6.065(6)- Part 70 Operating Permits.

Revision in the SIP remove the blanket applicability of operating permits to incinerators as follows:

- 10 CSR 10-6.065 (1)(B)- Applicability, Incinerators.

Revisions in the SIP also make non-substantive style changes throughout.

Details of Missouri's part 70 revisions can be found in the Technical Support Document located in this docket.

IV. What 112(1) Revision is EPA Approving?

Missouri's submission indicated that the revisions made to 10 CSR 10-6.065 "include any revisions necessary to retain 112 (1) approval under the Clean Air Act." The John S. Seitz Memo of

April 13, 1993, titled "Title V Program Approval Criteria for Section 112 Activities," provides guidance on revisions to state Title V programs and how they intersect with section 112 requirements. It states, "As for part 70 program revisions, no formal amendment to the initial title V program should typically be needed with respect to section 112 requirements taking effect after the effective date of the program. The State's up-front commitment and demonstrations (i.e., legal authorities and mechanisms to adopt additional section 112 requirements) coupled with EPA's ability to review individual permits and to audit part 70 programs periodically should provide reasonable assurance of adequate State implementation." The guidance further explains that, "The State, however, remains responsible for maintaining and enhancing as necessary its authority to implement section 112, including any new regulations. In light of the demonstrations and/or commitments required for part 70 approval, the EPA will presume that a State's request for approval of its operating permits program will be an implicit request under section 112(1) for delegation of authority to implement Federally-promulgated section 112 requirements in the same form in which EPA issues them." Our September 25, 1995, 112(1) delegation to Missouri remains in effect.

V. Have the Requirements for Approval of a SIP Revision Been Met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The State of Missouri provided the rule changes for public notice on September 29, 2016. The State of Missouri held a public hearing on the rule changes on October 29, 2016. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

VI. What Action is EPA Taking?

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. The Missouri conducted outreach with stakeholders prior to proposing the rule changes; and, conducted public notice on the rule changes. The Missouri received substantive comments on one topic, the fee for PAL renewal. Missouri revised the fee based on those comments. Based on the rulemaking history, we do not anticipate adverse comments. However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP and Operating

Permit Program if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Missouri Construction Permit Required Rule, 10 CSR 10-6.060, and Operating Permit Rule, 10 CSR 10-6.065. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.¹ EPA has made, and will continue to make, these documents generally

¹ 62 Fed. Reg. 27968 (May 22, 1997).

available electronically through www.regulations.gov and at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). This action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rulemaking would approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Thus Executive Order 13132 does not apply to this action. This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rulemaking also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement

for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Burden is defined at 5 CFR 1320.3(b).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this proposed rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b) (1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the final rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b) (2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 27, 2016. Mike Brincks,
Acting Regional Administrator,
Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 70 as set forth below:

Part 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA - Missouri

2. Section 52.1320(c) is amended by revising the entries for 10-6.060 and 10-6.065 to read as follows:

§ 52.1320 Identification of plan.

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(c) * * *

EPA-Approved Missouri Regulations

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * *				
Chapter 6 - Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
* * * * *				
10-6.060	Construction Permits Required	3/30/16	[Insert <u>Federal Register</u> date of publication] and [Insert <u>Federal Register</u> citation]	<p>–Provisions of the 2010 PM_{2.5} PSD-Increments, SILs and SMCs rule (75 FR 64865, October 20, 2010) relating to SILs and SMCs that were affected by the January 22, 2013 U.S. Court of Appeals decision are not SIP approved.</p> <p>–Provisions of the 2002 NSR reform rule relating to the Clean Unit Exemption, Pollution Control Projects, and exemption from recordkeeping provisions for certain sources using the actual-to-projected-actual emissions projections test are not SIP approved.</p> <p>–In addition, we have not approved Missouri's rule incorporating EPA's 2007 revision of the definition of "chemical processing plants" (the "Ethanol</p>

				<p>Rule," 72 FR 24060 (May 1, 2007) or EPA's 2008 "fugitive emissions rule," 73 FR 77882 (December 19, 2008).</p> <p>-Although exemptions previously listed in 10 CSR 10-6.060 have been transferred to 10 CSR 10-6.061, the Federally-approved SIP continues to include the following exemption, "Livestock and livestock handling systems from which the only potential contaminant is odorous gas."</p> <p>-Section 9, pertaining to hazardous air pollutants, is not SIP approved.</p> <p>-The phrase "including the revision published at 75 FR 31606-07 (effective August 2, 2010)" in subsection (8) (A) is not SIP approved.</p>
* * * * *				
10-6.065	Operating Permits	3/30/16	<p>[Insert <u>Federal Register</u> date of publication] and [Insert <u>Federal Register</u> citation]</p>	<p>Section (4) Basic State Operating Permits, has not been approved as part of the SIP. Subparagraphs (2) (A) 2.A., (2) (A) 2.B., and the words "except that" in paragraph (2) (A) 2</p>

				have not been approved as part of the SIP.
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PART 70 - STATE OPERATING PERMIT PROGRAMS

3. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

4. Amend Appendix A to part 70 by adding paragraph (gg) under Missouri to read as follows:

Appendix A to Part 70 - Approval Status of State and Local Operating Permits Programs

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Missouri

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(gg) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10-6.065, "Operating Permits" on April 6, 2016. We are approving this rule except for Section (4) which relates to the State Basic Operating Permits; Subparagraph (2) (A)2.A.; Subparagraph(2) (A)2.B.; and the words "except that" in Paragraph (2) (A)2. The state effective date is March 30, 2016. This revision is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

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